

**Objections to the Issuance of NPDES General Permit
to the City of Angola and Tri-State University, Stueben County
2006 OEA 8 (03-W-J-3205)**

TOPICS:

dismissal
rules
water
general permit
permit by rule
NPDES
moot

PRESIDING JUDGE:

Gibbs

PARTY REPRESENTATIVES:

Permittees: Beth Beech: Tri-State University; Kim Shoup: City of Angola
Petitioner: Thomas Neltner
IDEM: Sierra Cutts

ORDER ISSUED:

March 30, 2006

INDEX CATEGORY:

Water

FURTHER CASE ACTIVITY:

[none]

STATE OF INDIANA)
)
COUNTY OF MARION)

BEFORE THE INDIANA OFFICE OF
ENVIRONMENTAL ADJUDICATION

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

Findings of Fact

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3. On January 20, 2004, the McCoys, by counsel, filed their Amended Petition for Administrative Review. The McCoys raise 2 reasons for their request for administrative review. The first reason is that “General Permit Rule for storm water run-off with municipal separate storm sewer system conveyances at 327 IAC 15-13 is invalid pursuant to 327 IAC 15-2-10.”³ The second reason is “IDEM acted arbitrarily and capriciously by not considering or acting on petitioners demand for an individual NPDES permit for the City of Angola.”⁴
4. On August 31, 2004, the IDEM filed its Motion to Dismiss that portion of the Amended Petition that challenges the validity of 327 IAC 15-2-10. IDEM’s argument alleges that the Office of Environmental Adjudication does not have subject matter jurisdiction to hear any argument based on the invalidity of a regulation. The McCoys filed their Response to Indiana Department of Environmental Management’s Motion to Dismiss on October 28, 2004. Proposed Findings of Fact, Conclusions of Law and Order were filed on January 7, 2005. Oral argument was held on March 8, 2005. The presiding Environmental Law Judge (the “ELJ”) issued Findings of Fact, Conclusions of Law and Order granting IDEM’s Motion to Dismiss on March 15, 2005. The Petitioners did not request judicial review of this order.
5. On January 7, 2005, the Petitioners filed a Motion to Order IDEM to Accept or Reject Petition for Individual Permit.
6. On February 21, 2005, the IDEM denied the Petitioners’ request that the City and Tri-State be required to apply for an individual MS4 permit instead of being allowed to discharge under a general permit.
7. On January 12, 2006, the IDEM filed its Motion to Dismiss Petition for Review. The Petitioners have not filed any response to the Motion.

CONCLUSIONS OF LAW

1. The Office of Environmental Adjudication (“OEA”) has jurisdiction over the decisions of the Commissioner of the Indiana Department of Environmental Management (“IDEM”) and the parties to this controversy pursuant to Ind. Code § 4-21.5-7, et seq.
2. Findings of Fact that may be construed as Conclusions of Law and Conclusions of Law that may be construed as Findings of Fact are so deemed.

³ See Amended Petition for Administrative Review, filed January 20, 2004, page 1.

⁴ See Amended Petition for Administrative Review, filed January 20, 2004, page 3.

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3. “In reviewing a Rule 12(B)(6) motion, a court is required to take as true all allegations upon the face of the complaint and may only dismiss if the plaintiff would not be entitled to recover under any set of facts admissible under the allegations of the complaint. This Court views the pleadings in a light most favorable to the nonmoving party, and we draw every reasonable inference in favor of that party.” Huffman v. Indiana Office of Environmental Adjudication, et al., 811 N.E.2d 806, 814 (Ind. 2004).
4. “When a dispositive issue in a case has been resolved in such a way as to render it unnecessary to decide the question involved, the case will be dismissed.” Travelers Indem. Co. v. P.R. Mallory & Co., 772 NE.2d 479, 484 (Ind. App. 2002). A case is deemed moot when there is no effective relief that can be rendered to the parties by the Court. A.D. v. State, 736 N.E.2d 1274, 1276 (Ind. App. 2000). In this case, the Petitioners only remaining request for relief is that the IDEM act on the Petitioners’ demand that the City and Tri-State be required to operate under an individual NPDES permit rather than allow the permittees to operate under a general permit. The Petitioners make this request in the Amended Petition and again in the Motion to Order IDEM to Accept or Reject Petition for Individual Permit. As the IDEM has responded to and denied this request, the Petitioners have received the relief they seek, that is, that the IDEM make a decision. There is no other remedy available to the Petitioners.
5. This case is moot as the remaining issue raised by the Petitioners has been addressed and resolved by the IDEM’s action on February 21, 2005.

ORDER

AND THE COURT, being duly advised, **GRANTS** the IDEM’s Motion to Dismiss and **ORDERS, ADJUDGES AND DECREES** that this matter is **DISMISSED**.

You are hereby further notified that pursuant to provisions of IND. CODE § 4-21.5-7.5, the Office of Environmental Adjudication serves as the Ultimate Authority in the administrative review of decisions of the Commissioner of the Indiana Department of Environmental Management. This is a Final Order subject to Judicial Review consistent with applicable provisions of IC 4-21.5. Pursuant to IC 4-21.5-5-5, a Petition for Judicial Review of this Final Order is timely only if it is filed with a civil court of competent jurisdiction within thirty (30) days after the date this notice is served.

IT IS SO ORDERED THIS 30th day of March, 2006.

Catherine Gibbs
Environmental Law Judge